Local 560, International Brotherhood of Teamsters *and* County Concrete Corporation. Cases 22–CC–083895, 22–CE–084893, and 22–CC–099341

August 26, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND JOHNSON

On July 26, 2013, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions (as amended) and to adopt the recommended Order as modified and set forth in full below.[1]

The complaint in this case alleges that the Respondent, Local 560, International Brotherhood of Teamsters (Union), violated Section 8(b)(4)(ii)(A) and (B) of the Act based on language in a Winter 2013 Update letter (the Update Letter) the Union sent to neutral construction contractors. The judge found that the Union violated the Act in both respects.

As explained below, we find that the Union has waived any challenge to the judge's determination that it violated Section 8(b)(4)(ii)(A) by failing to except to the judge's 8(b)(4)(ii)(A) finding. Next, for the reasons stated by the judge and those set forth below, we find that the Respondent violated Section 8(b)(4)(ii)(B) as alleged. Finally, for the reasons set forth below, we deny the General Counsel's Motion for Summary Default Judgment in previously settled Cases 22–CC–083895 and 22–CE–084893, without prejudice to the General Counsel renewing the motion within 14 days from the date of this Decision and Order.[2]

1. The 8(b)(4)(ii)(A) allegation

The complaint alleges that the Union, through the Update Letter it sent to signatory contractors, violated Section 8(b)(4)(ii)(A) by threatening those contractors with an object of forcing or requiring them to enter into an agreement prohibited by Section 8(e) not to do business with County Concrete.[3] In the Update Letter, which is quoted at length in the attached judge's decision, the Union states that "County Concrete Corporation continues its attempts to seriously undermine redi-mix delivery area standards" and that "Local 560 will not stand actionless as County Concrete continues to operate at substandard wages and economic benefits." The Update Letter continues:

> Local 560 wishes to remind all AGC Contractors who are signatory to Local 560 construction contracts that the contract does place certain expectations upon the

[1] We amend the judge's Conclusions of Law consistent with our findings herein. We modify the judge's recommended Order to conform to the violations found and the Board's standard remedial language, and we shall substitute a new notice to conform to the Order as modified and in accordance with our decision in *Durham School Services*, 360 NLRB No. 85 (2014).

[2] The only case litigated before Judge Amchan during the unfair labor practice hearing was Case 22–CC–099341. Previously, the other two cases included in the case caption—Cases 22–CC–083895 and 22–CE–084893—had been resolved by an informal settlement agreement approved by the Regional Director. Taking the position that the violations in 22–CC–099341 constitute a breach of the terms of the settlement agreement, the General Counsel filed a motion to strike portions of the Respondent's answer, for summary default judgment, and for the issuance of Board Decision and Order in Cases 22–CC–083895 and 22–CE–084893. The judge granted the General Counsel's request to "forward the matter to the Board for the entry of summary judgment in" Cases 22–CC–083895 and 22–CE–084893. As a result of the judge's action, we deem Cases 22–CC–083895 and 22–CE–084893 severed from Case 22–CC–099341 and transferred to the Board.

The General Counsel and County Concrete ask the Board to issue a broad remedial order against the Union, and County Concrete further asks that a broad order remain in effect for 3 years. The General Counsel also contends that we should require the Union to mail "an appropriate notice to all recipients of the 'Winter 2013 Update.'" At present, we do not find these remedies necessary, but the General Counsel may renew his request for these remedies in the event he decides to refile his motion for default judgment in Cases 22–CC–083895 and 22–CE–084893.

In his decision, Judge Amchan observed that Judge Lauren Esposito issued a decision on February 15, 2013, in another proceeding involving the parties to the instant case, in which she found that the Union violated Sec. 8(b)(4)(ii)(B) by threatening to picket neutral employers Sharp Concrete Corporation and Macedos Construction with an object of forcing them to cease doing business with County Concrete. The Board affirmed Judge Esposito's finding that the Union violated Sec. 8(b)(4)(ii)(B) by threatening to picket Sharpe Concrete, but reversed her finding that the Union violated Sec. 8(b)(4)(ii)(B) by threatening Macedos Construction. *Teamsters Local 560 (County Concrete Corp.)*, 360 NLRB No. 125 (2014). In his decision in the instant case, Judge Amchan adopted Judge Esposito's findings and conclusions "[w]ith regard to the events tried before Judge Esposito." We do not rely on Judge Amchan's statement to the extent that it relates to any of Judge Esposito's findings and conclusions that the Board modified or reversed.

[3] As relevant here, Sec. 8(b)(4)(ii)(A) makes it "an unfair labor practice for a labor organization or its agents . . . to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is forcing or requiring any employer . . . to enter into any agreement . . . prohibited by section 8(e)." Sec. 8(e), in turn, relevantly provides that it is "an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, . . . [to] cease doing business with any other person," subject to certain provisos inapplicable here.

> contractor in regard to area standards. During the term of the Local 560 collective bargaining agreement, Local 560's enforcement of the provision will be enforced through the grievance and arbitration procedure, though this does not . . . necessarily mean that Local 560 will not be engaging in area standards picketing in the presence of County Concrete . . . .

The judge found that the Union, by its Update Letter, was threatening to enforce paragraph 1(q) of the Union's 2012–2013 collective-bargaining agreement with the Associated General Contractors of New Jersey (CBA). Paragraph 1(q) of the CBA states:

> The employer agrees that it shall accept deliveries of concrete and aggregate only from drivers who are receiving wages, fringe benefits and the economic dollar values of working conditions that are prevailing in the area, as set by the applicable Teamsters contract for the concrete, aggregate or other type of delivery then prevailing in the County in which the site is located.

Based on paragraph 1(q) and the Update Letter, the judge found that the Union violated Section 8(b)(4)(ii)(A). He observed that there "does not seem to be any question that . . . paragraph 1(q) is a blatant violation of Section 8(e) . . . ." He also stated that the Union, in its posttrial brief, "appears to concede that the Winter 2013 Update letter violates Section 8(b)(4)(ii)(A) in threatening to enforce paragraph 1(q) of the 2012–2013 contract through the grievance and arbitration procedures of that contract and that paragraph 1(q) violates Section 8(e)."

The Union does not except to the judge's finding that it violated Section 8(b)(4)(ii)(A). The Union argues, however, that the judge did not have "jurisdiction" to find that the Union violated Section 8(e) because the complaint "did not allege conduct in violation of Section 8(e)." The Union also contends that the complaint alleged only an 8(b)(4)(ii)(B) violation.

The Union has misconstrued both the text of the complaint and the judge's analysis. Contrary to the Union's contention, the complaint explicitly alleges that the Union violated Section 8(b)(4)(ii)(A). The complaint also alleges that the above-quoted language of paragraph 1(q) constitutes "an agreement . . . prohibited by Section 8(e) of the Act," and that the Union, by its Update Letter, violated Section 8(b)(4)(ii)(A) by threatening to force or require signatory contractors to enter into such an agreement.[4] Moreover, to determine whether the Union violated Section 8(b)(4)(ii)(A) as alleged, the judge had to determine whether paragraph 1(q) constitutes "an agreement . . . prohibited by Section 8(e) of the Act." As noted above, Section 8(b)(4)(ii)(A) makes it unlawful for a labor organization to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce with an object of forcing or requiring any employer "*to enter into any agreement . . . prohibited by section 8(e)*" (emphasis added). Accordingly, the judge properly addressed whether paragraph 1(q) was an agreement prohibited by Section 8(e) as a necessary predicate to determining whether the Union violated Section 8(b)(4)(ii)(A). Again, the Union does not except to the judge's finding that it violated Section 8(b)(4)(ii)(A). Neither does the Union argue that the judge's predicate 8(e) determination was incorrect on the merits. Accordingly, we find that the Union has waived any challenge to the judge's finding that the Union violated Section 8(b)(4)(ii)(A). See Section 102.46(b)(2) of the Board's Rules and Regulations ("Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived.").

2. The 8(b)(4)(ii)(B) allegation

The complaint also alleges that the Union violated Section 8(b)(4)(ii)(B), which prohibits labor organizations from threatening, coercing, or restraining neutral parties with an object of forcing the neutrals to cease doing business with an employer with whom the union has a dispute.[5] In this regard, the complaint alleges that through its Update Letter, the Union, in support of its dispute with Country Concrete, threatened contractors Atlas Concrete Corp., Macedos Construction, LLC, Railroad Construction Company, Inc., Vollers Excavating & Construction, and other persons "with picketing of [their] jobsite[s]," and that an object of the picketing threat "has been to force or require Atlas, Macedos, Railroad, and Vollers and other persons to cease handling or otherwise dealing in the products of, and to cease doing business

[4] The Board has long held, with judicial approval, that "the reaffirmation of an existing hot cargo arrangement is included within the meaning of the statutory phrase 'to enter into' and is unlawful under Section 8(e), and that a union's attempt by coercive means to obtain such reaffirmation from an employer is violative of Section 8(b)(4)(ii)(A)." *Los Angeles Mailers No. 9, I.T.U. (Hillbro Newspaper Printing Co.)*, 135 NLRB 1132, 1137 (1962), enfd. 311 F.2d 121 (D.C. Cir. 1962).

[5] As relevant here, Sec. 8(b)(4)(ii)(B) makes it "an unfair labor practice for a labor organization or its agents . . . to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is . . . forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . . *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing."

with [County Concrete]." We affirm the judge's finding that the Union violated Section 8(b)(4)(ii)(B).

As found by the judge, the Update Letter is unlawful "on its face" under Section 8(b)(4)(ii)(B). In addition to the passages quoted in section 1, above, the Update Letter informed signatory contractors that if "*you* are going to utilize . . . County Concrete . . . , be well aware that Local 560 will be showing up at *your* project with picketing and we will no longer provide you with advanced notice" (emphasis added). This picketing threat, directed at neutral employers, constituted clear evidence of the Union's secondary objective to coerce the neutral employers to cease doing business with County Concrete, the employer with which the Union had a primary dispute.

We reject the Union's argument that no violation may be found because it qualified its picketing threat in the Update Letter with assurances that its picketing would conform to standards set forth in *Sailors' Union of the Pacific (Moore Dry Dock),* 92 NLRB 547 (1950).[6] It is well settled that "compliance with the *Moore Dry Dock* standards does not preclude a finding of unlawful picketing where there is independent evidence of a secondary objective." *Teamsters Local 560 (County Concrete Corp.),* 360 NLRB No. 125, slip op. at 11 (2014); see also *Service Employees Local 254* (*Women & Infants Hospital*), 324 NLRB 743,747 (*1997); Electrical Workers Local 441 (Rollins Communications*), 222 NLRB 99, 101 (1976). Here, there is independent evidence of such an unlawful secondary objective. In the same Update Letter that contained *Moore Dry Dock* assurances, the Union reminded signatory contractors of their contractual agreement, prohibited by Section 8(e), not to accept deliveries of concrete and aggregate from drivers who are not receiving area-standard wages and benefits, and it singled out County Concrete as a company that "seriously undermines redi-mix delivery area standards." This was an unmistakable message to the neutral signatory contractors to cease dealing in County Concrete's products and cease doing business with County Concrete, and it demonstrated a secondary objective behind the Union's picketing, notwithstanding its promise to adhere to *Moore Dry Dock* standards.

[6] Under *Moore Dry Dock*, picketing at a secondary situs is presumptively lawful if it is limited to times when the primary employer is engaged in its normal business at the site, the picketing takes place reasonably close to the situs of the primary dispute, and the picketing clearly discloses that the dispute is with the primary employer. 92 NLRB at 549.

3. The General Counsel's motion to strike portions of the Respondent's answer, for summary default judgment, and for the Issuance of Board decision and order

As stated in footnote 2 above, this case originally included allegations in Cases 22–CC–083895 and 22–CE–084893 that were settled pursuant to an informal settlement agreement. The General Counsel argues that by committing the violations that we have found here in Case 22–CC–099341, the Union has breached the terms of the settlement agreement in Cases 22–CC–083895 and 22–CE–084893 and that, pursuant to the "Performance" provision of the settlement agreement, the Board should enter a default judgment in the previously settled cases.[7]

However, we are unable to discern from the General Counsel's motion and supporting memorandum the specific terms of the settlement agreement the General Counsel contends that the Union has breached as a result of the violations it committed in the instant case, nor is such breach readily self-evident. We therefore deny the General Counsel's motion. However, we do so without prejudice to the General Counsel renewing the motion, if he so chooses, within 14 days from the date of this Decision and Order, and providing an explanation of the relationship between the violations in the instant case, the terms of the settlement agreement, and the "Performance" provision of the settlement agreement. In the event the General Counsel files a renewed motion, the Union shall be granted 14 days from the date of such filing to respond, if it so chooses.

AMENDED CONCLUSIONS OF LAW

1. County Concrete Corporation is a person engaged in commerce or in an industry affecting commerce within the meaning of Section 2(1), (6), and (7) of the Act and an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Local 560, International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening to enforce paragraph 1(q) of its collective-bargaining agreement with signatory employers,

[7] Specifically, in his motion, the General Counsel asks the Board to (i) find that the Union has waived its right to file an answer to pars. 7(b) through 13 of the complaint (the allegations relating to the previously settled cases) and that the Union has admitted all allegations contained therein; (ii) strike pars. 7(b) through 13 of the Union's answer as they relate to Cases 22–CC–083895 and 22–CE–084893; (iii) issue a decision and order finding the allegations in the complaint relating to Cases 22–CC–083895 and 22–CE–084893 to be true, and make findings of fact and conclusions of law consistent with those allegations adverse to the Union on all issues raised by the pleadings; and (iv) provide a remedy for the violations found consistent with the terms of the settlement agreement and the notice to employees attached to the settlement agreement.

the Respondent has violated Section 8(b)(4)(ii)(A) of the Act.

4. By threatening employers who are signatory to collective-bargaining agreements with picketing, where an object thereof was to force or require such employers to cease doing business with County Concrete, the Respondent has violated Section 8(b)(4)(ii)(B) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Local 560, International Brotherhood of Teamsters, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening any employer who is signatory to a collective-bargaining agreement with Local 560 with picketing, where an object thereof is to force or require such employer to cease doing business with County Concrete Corporation.

(b) Threatening to enforce, through grievance and arbitration procedures, paragraph 1(q) of the collective-bargaining agreement with signatory employers, where an object thereof is to force or require any signatory employer to cease doing business with County Concrete Corporation.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Sign and mail a letter to all employers to whom the 2013 Winter Update was sent informing each such employer that the 2013 Winter Update has been found to violate the Act and has been rescinded.

(b) Within 14 days after service by the Region, post at its New Jersey facility copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with employees and members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 14 days after service by the Region, deliver to the Regional Director for Region 22 signed copies of the notice in sufficient number for posting by County Concrete Corporation at its New Jersey facility, if it wishes, in all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the General Counsel's motion to strike portions of Respondent's answer, for summary default judgment, and for the issuance of board decision and order is denied without prejudice to the General Counsel renewing his motion, as described herein.

Dated, Washington, D.C. August 26, 2015

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Harry Johnson I. Johnson, III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

WE WILL NOT threaten any employer who is signatory to a collective-bargaining agreement with us with picketing, where an object thereof is to force or require that employer to cease doing business with County Concrete Corporation.

WE WILL NOT threaten to enforce, through grievance and arbitration procedures, paragraph 1(q) of our collective-bargaining agreement with signatory employers, where an object thereof is to force or require any signatory employer to cease doing business with County Concrete Corporation.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL sign and mail a letter to all employers to whom the 2013 Winter Update was sent informing each such employer that the 2013 Winter Update has been found to violate the Act and has been rescinded.

WE WILL, within 14 days after service by the Region, sign and return to the Regional Director for Region 22 sufficient copies of the notice for posting by County Concrete Corporation at its facility in New Jersey, if it wishes, in all places where notices to employees are customarily posted.

LOCAL 560, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

The Board's decision can be found at www.nlrb.gov/case/22–CC–083895 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Michael P. Silverstein, Esq., for the General Counsel.
Paul Montalbano, Esq. (Cohen, Leder, Montalbano & Grossman), of Kenilworth, New Jersey, for the Respondent.
John Adams, Esq. (Susanin, Widman & Brennan, P.C.), of Wayne, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Newark, New Jersey, on May 29, 2013. County Concrete Company filed the charge in docket 22–CC–099341 on February 28, 2013, and the General Counsel issued the complaint on April 29, 2013.

Despite the caption, only docket 22–CC–099341 was litigated before me. The other two dockets involve cases that were settled. The General Counsel alleges that by violating the Act in 22–CC–099341, Respondent has breached the settlement of the prior cases. If I find that the Act was violated as alleged in 22–CC–099341, the General Counsel has asked me to forward the matter to the Board for the entry of summary judgment in the other two cases. I hereby do so.

The essence of the instant case is that the General Counsel alleges that Respondent violated Section 8(b)(4)(ii)(A) and (B) in sending a letter to signatory construction companies, with whom it does not have a labor dispute, threatening, coercing and restraining them from doing business with the Charging Party, County Concrete Corporation.[1]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, and Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Charging Party, County Concrete Corporation supplies ready-mix concrete to various employers in northern New Jersey. County Concrete purchases and receives goods valued in excess of $50,000 directly from points outside of New Jersey. It is thus an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union, Teamsters Local 560, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

County Concrete's ready-mix drivers have been represented by Teamsters Local 893 since 2009, but during this period there has not been a collective-bargaining agreement between County and Local 893. It pays its ready-mix drivers substantially less than drivers covered by Local 560's contracts. County is one of about a half dozen suppliers of ready-mix concrete to the major construction contractors in northern New Jersey.

Respondent Union embarked upon a campaign regarding County Concrete's wages sometime in 2010. County Concrete filed a charge alleging that Respondent violated Section 8(b)(4)(i) and (ii)(B) in November 2010. This was settled in March 2011 and was referred to the Board for summary judgment proceedings by Administrative Law Judge Lauren Esposito in her February 13, 2013 decision. That decision concerned other charges filed against Respondent by County Concrete. Judge Esposito's decision dealt with conversations between Local 560 agents and potential customers of County Concrete on or about November 1, and December 30, 2011. With regard to the events tried before Judge Esposito, I adopt her findings and conclusions, which are currently pending before the Board.

On April 26, 2011, Anthony Valdner, president of Teamsters Local 560, sent a letter to companies who are parties to collective-bargaining agreements between Local 560 and the Associated General Contractors of New Jersey, Building Contractors Association of New Jersey and the Utility and Transportation Contractors Association, which threatened to engage in "area standards picketing" at jobsites when County Concrete is delivering concrete.[2] Most or all of these employers do not employ their own ready-mix drivers. Some have purchased concrete from County Concrete in the past. County's employees deliver concrete to construction sites. They do not perform other work

[1] The General Counsel alleges Respondent violated Sec. 8(b)(4)(ii)(A) by forcing neutral employers to enter into an agreement not to do business with County Concrete and Sec. 8(b)(4)(ii)(B) by threatening to picket if these employers did business with County Concrete.

[2] R. Exh. 7, docket 22–CC–01522.

at these sites.

On November 1, 2011, Valdner spoke with John Domingues, the owner of Sharpe Concrete Corporation, a construction company customer of County Concrete. In her decision of February 13, 2013, Judge Esposito found that in this conversation, Respondent violated Section 8(b)(4)(ii)(B) by threatening to picket Sharpe Concrete at the St. Peter's College jobsite, with an object of forcing or requiring Sharpe to cease doing business with County Concrete.

On about December 30, 2011, Joseph DiLeo, an agent of the Respondent Union, told Antonio Vieira, general superintendent of Macedos Construction that if Macedos did not find a concrete supplier other than County Concrete on the Novartis parking garage project, Respondent would picket the job. Judge Esposito also found that Respondent, by DiLeo, violated Section 8(b)(4)(ii)(B) by threatening to picket with an object of forcing Macedos to cease doing business with County.

On or about February 28, 2013, Valdner sent out a similar letter to his April 2011 letter, entitled, "Winter 2013 Update." This letter is the subject of the instant litigation. The Winter Update stated in pertinent part:

> Dear AGC, BCA, UTCA and Independent Construction Contractors and Subcontractors:
>
> Local 560, IBT continues its efforts to protect area standards of wages and benefits paid to drivers in the redi-mix concrete delivery industry.
>
> Target: County Concrete Corporation
>
> Target: Service Concrete Company; Joel Tanis & Sons
>
> County Concrete Corporation continues its attempts to seriously undermine redi-mix delivery area standards. Though County Concrete has a collective bargaining relationship with Local 863, I.B.T., the parties have been without a contract for over two years due to County Concrete's offer of substandard wages and benefits. It is not expected any time soon that they will reach agreement on economic terms for a contract. Strike and picketing should be expected. While County Concrete and Local 863 may be expected to continue to seek to resolve their differences, Local 560 will not stand actionless as County Concrete continues to operate at substandard wages and economic benefits, with affect to destroy area standard wages and economic benefits.
>
> First, Local 560 wishes to remind all AGC Contractors who are signatory to Local 560 construction contracts that the contract does place certain expectations upon the contractor in regard to area standards. During the term of the Local 560 collective bargaining agreement, Local 560's enforcement of the provision will be enforced through the grievance and arbitration procedure, though this does not necessarily mean that Local 560 will not be engaging in area standards picketing in the presence of County Concrete, Service Concrete and Joel Tanis and Sons where not prohibited.
>
> For Companies not signatory to the Local 560—AGC contract, and other Local 560 contracts that do not have a no-strike provision prohibiting area standards picketing, Local 560 intends to aggressively engage in area standards picketing.
>
> In the past, Local 560 would contact the contractor who had in advisedly purchased from County Concrete, or other substandard concrete supplier, and provide the respectful courtesy of advance notice of picketing so that the contractor be made aware and at its option make arrangements. Due to recent claims that such courtesy notices were viewed as "threats," Local 560 will no longer provide advanced notice of picketing. If you are going to utilize either County Concrete or Service Concrete (Joel Tanis), be well aware that Local 560 will be showing up at your project with picketing and will no longer provide you with advanced notice.
>
> So that there can be no claim of confusion or assertion of misunderstanding of any future conversations you may have with Local 560 Business Agents, Local 560 advises that all "threats to picket" are made with, and actual picketing will be conducted, in accordance with *Moore Dry Dock* Standards for Picketing at a Secondary Site; as indicated below:
>
> 1. Picketing will clearly disclose that the dispute is with County Concrete for its failure to pay Area Standards;
> 2. Picketing will be conducted at times County Concrete is "engaged in its normal business" at the Secondary Site;
> 3. Picketing will be conducted at times County Concrete is "located" or "present" on the Secondary employer's site.
> 4. Picketing will be limited to places reasonably close to the sites of the dispute, with due regard to reserve gates and property access.
>
> Local 560's energies and vigorous activities will be persistent and will continue until County Concrete Corp., Service Concrete and Joes Tanis & Sons, commence to pay their redi-mix drivers Area Standards when making deliveries in Local 560 geographic territory.
>
> Local 560 does not seek to enmesh your company in its dispute with County Concrete, Service and Joel Tanis & Sons. Whichever redi-mix company you decide to utilize, we recommend prudence be taken to determine what rates of pay and benefits the Company pays its drivers.
>
> If you have any questions in regard to the meaning of the *Moore Dry Dock* Standards, you should contact the National Labor Relations Board or our own counsel. Because of previous claims of improper statements made by Local 560 Business Representatives, Local 560 Business Representatives are under instruction that they shall not add to, supplement, or explain this letter to any contractor, and you are specifically advised that any such statements are not operative or authorized such that they may not be claimed to be made against Local 560's interests.

The Winter 2013 Update differs from the April 2011 letter is several respects. The paragraph stating that advance notice of picketing will no longer be provided was not in the April 2011 letter. Similarly, the language promising enforcement of areas standards through the grievance and arbitration procedure of

the collective-bargaining agreement was not in the April 2011 letter. That contract expired by its terms on April 30, 2013 (GC Exh. 5), but may have been extended (Tr. 35).

The May 1, 2012—April 30, 2013 collective-bargaining agreement between Local 560 and the Associated General Contractors of New Jersey contained the following clause, paragraph 1(q):

> The employer agrees that it shall accept deliveries of concrete and aggregate only from drivers who are receiving wages, fringe benefits and the economic dollar values of working conditions that are prevailing in the area, as set by the applicable Teamsters contract for the concrete, aggregate or other type of delivery then prevailing in the County in which the site is located.

Analysis

SECTION 8(b)(4)(ii)(B)

The General legal principles applicable to Respondent's letter, insofar as it advises neutral employers of the Union's intent to picket, were summarized by Judge Esposito in her February 13, 2013 decision in a case involving the same parties, docket 22–CC–01522 et. al. Section 8(b)(4)(ii)(B) prohibits labor organizations and their representatives from threatening, coercing, or restraining any person engaged in commerce, "where an object thereof is forcing or requiring any person to cease doing business with any other person." It is well settled that an unlawful secondary objective need not be the sole motivation for the union's conduct so long as an unlawful object exists. Prohibited conduct in furtherance of that objective violates Section 8(b)(4)(ii)(B). In addition, the Board has held that an "unqualified threat to picket a neutral employer's jobsite where the primary employer is also working violates Section 8(b)(4)(ii)(B) absent assurances that picketing will be conducted in accordance with the standards articulated in *Sailor's Union of the Pacific (Moore Dry Dock),* 92 NLRB 547 (1950).[3]

However, compliance with the *Moore Dry Dock* standards does not preclude a finding of unlawful picketing where there is independent evidence of a secondary objective. *Teamsters Local 126 (Ready Mix Concrete, Inc.),* 200 NLRB 253 (1972); *Electrical Workers Local 441 (Rollins Communications, Inc.),* 222 NLRB 99, 101 (1976).

The principal disagreement between the parties in applying these principles to this case is whether, as Respondent contends, the Winter Update letter is to be considered in isolation, or in conjunction with the history of the parties over the last 3 years. I conclude this makes no difference to the outcome of this case.

I conclude that the Winter Update, on its face, is motivated by the Union's intention to discourage signatory contractors from doing business with County Concrete. Area standards picketing is presumptively valid when a union complies with the *Moore Dry Dock* standards. However, while picketing may evoke a response from County's employees, and others, as well as neutral employers, the Winter Update letter, which was sent only to County's potential customers, could have only one objective. That objective is to discourage neutral employers from ordering concrete from County. Moreover, there is no way to segregate the statements in the Winter Update from the Union's continuing efforts over the last 3 years to discourage union contractors from doing business with County Concrete. Thus, I conclude the letter violates Section 8(b)(4)(ii)(B).

Section 8(b)(4)(ii)(A) and 8(e)

At page 5 of its posttrial brief, Respondent appears to concede that the Winter 2013 Update letter violates Section 8(b)(4)(ii)(A) in threatening to enforce paragraph 1(q) of the 2012–2013 contract through the grievance and arbitration procedures of that contract and that paragraph 1(q) violates Section 8(e). Its argument appears to be that changes to its contracts since May 1, 2013, have rendered this issue moot.

Respondent has not established on this record either that the issue was moot when the Winter Update 2013 was sent to signatory contractors, or that it has become moot by virtue of the execution of a successor collective-bargaining agreement, Tr. 34–35. Therefore, I find that the Winter Update violates Section 8(b)(4)(ii)(A) and 8(e), as alleged. There does not seem to be any question that the paragraph 1(q) is a blatant violation of Section 8(e) and that the construction industry proviso/exception in Section 8(e) does not apply to provisions aimed at depriving County, a ready-mix concrete supplier, of customers, *Teamsters Local 251 (Material Sand & Stone),* 356 NLRB No. 135 (2011).

CONCLUSION OF LAW

By sending its "Winter Update" letter to employers who are signatory to collective-bargaining agreements with it, Respondent, Local 560, International Brotherhood of Teamsters has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(ii)(A) and (B) of the Act. Paragraph 1(q) of the Respondent's 2012–2013 collective-bargaining agreement violates Section 8(e) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Local 560, International Brotherhood of Teamsters, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employers who are signatory to collective-bargaining agreements with it with picketing and/or the filing

[3] The *Moore Dry Dock* standards are essentially those set forth in the numbered paragraphs of the Respondent's Winter Update letter.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

of grievances, where the object is to force such employers from ceasing to do business with County Concrete Corporation.

(b) In any manner coercing employers in violation of Section 8(b)(4)(ii)(A) and (B) and Section 8(e).

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Sign and mail a letter to all employers to whom the 2013 Winter Update was sent informing each such employer that the 2013 Winter Update has been found to violate the Act and that it has been rescinded.

(b) Within 14 days after service by the Region, post at its office copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its signatory employers by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 26, 2013

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten, coerce, or restrain any employer, where an object thereof is to force that employer to cease doing business with County Concrete Corporation.

LOCAL 560, INTERNATIONAL BROTHERHOOD OF TEAMSTERS